

HAYES PAWLENKO LLP
MATTHEW B. HAYES (SBN 220639)
mhayes@helpcounsel.com
KYE D. PAWLENKO (SBN 221475)
kpawlenko@helpcounsel.com
1414 Fair Oaks Avenue, Unit 2B
South Pasadena, CA 91030
(626) 808-4357

Attorneys for Plaintiff:
LUCIANO BARRAGAN

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

LUCIANO BARRAGAN,) CASE NO.
individually and as a)
representative of a class of)
participants and beneficiaries on) CLASS ACTION COMPLAINT
behalf of the Honeywell 401(k)) AND DEMAND FOR JURY
Plan,) TRIAL
)
)
Plaintiff,)
v.)
)
HONEYWELL INTERNATIONAL)
INC.; and DOES 1 to 10 inclusive,)
)
Defendants.)
_____)

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

1 1. Plaintiff LUCIANO BARRAGAN (“Plaintiff”), a former
2 participant in the Honeywell 401(k) Plan (“Plan” or “Honeywell Plan”),
3 brings this Employee Retirement Income Security Act (“ERISA”) action
4 on behalf of the Plan under 29 U.S.C. §§ 1132(a)(2) and (3), and under
5 Rule 23 of the Federal Rules of Civil Procedure as a representative of a
6 class of participants and beneficiaries of the Plan, against Defendant
7 HONEYWELL INTERNATIONAL INC. (“Honeywell” or the “Company”)
8 for (1) breach of ERISA’s fiduciary duties, (2) violation of ERISA’s anti-
9 inurement provision, and (3) engaging in self-dealing and transactions
10 prohibited by ERISA.

11 **JURISDICTION AND VENUE**

12 2. This Court has federal question subject matter jurisdiction
13 under 28 U.S.C. § 1331 because this is an action under 29 U.S.C. §§
14 1132(a)(2), (a)(3) for which federal district courts have exclusive
15 jurisdiction under 29 U.S.C. § 1132(e)(1).

16 3. This district is the proper venue for this action under 29
17 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b)(2) because a substantial part
18 of the events or omissions giving rise to the claim occurred here.

19 **PARTIES**

20 4. The Honeywell Plan is a defined contribution, individual
21 account, employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and
22 § 1002(34) and is subject to the provisions of ERISA pursuant to 29 U.S.C.
23 § 1003(a).

24 5. Defendant Honeywell is a global technology and
25 manufacturing company with offices in Torrance, California. Honeywell
26 is both the Plan sponsor under 29 U.S.C. § 1002(16)(B) and, through its
27 Vice President – Human Resources, Compensation and Benefits, the
28

1 Plan administrator under 29 U.S.C. § 1002(16)(A) with broad authority
2 over the administration and management of the Plan and its assets.

3 6. Honeywell is a fiduciary of the Plan within the meaning of 29
4 U.S.C. § 1002(21)(A) because it exercised authority and control
5 respecting the management and disposition of Plan assets and
6 discretionary responsibility in the administration of the Plan with
7 respect to the matters alleged herein.

8 7. Plaintiff is a resident of California, was previously employed
9 by Honeywell in Torrance, California, and until last year, was a
10 participant in the Honeywell Plan whose account has been charged with
11 a share of the Plan's administrative expenses.

12 8. The defendants sued by the fictitious names DOES 1 through
13 10, inclusive, are Plan fiduciaries unknown to Plaintiff who exercise or
14 exercised discretionary authority or discretionary control respecting the
15 management of the Plan, exercise or exercised authority or control
16 respecting the management or disposition of its assets, or have or had
17 discretionary authority or discretionary responsibility in the
18 administration of the Plan and are responsible or liable in some manner
19 for the conduct alleged in the complaint. Plaintiff will amend this
20 complaint to allege the true names and capacities of such fictitiously
21 named defendants when they are ascertained. Defendants Honeywell
22 and DOES 1 through 10 are referred to as "Defendants."

23 **FACTUAL ALLEGATIONS**

24 9. In accordance with 29 U.S.C. § 1103(a), the assets of the
25 Honeywell Plan are held in a trust fund.

26 10. The Plan is funded by a combination of wage withholdings by
27 Plan participants and Company contributions that are deposited into the
28

1 Plan's trust fund. Upon their deposit into the Plan's trust fund, all
2 participant contributions and Company contributions become assets of
3 the Plan.

4 11. As an individual account, defined contribution retirement
5 plan, the Honeywell Plan "provides for an individual account for each
6 participant and for benefits solely upon the amount contributed to the
7 participant's account, and any income, expenses, gains and losses, and
8 any forfeiture of accounts of other participants which may be allocated to
9 such participant's account." 29 U.S.C. § 1002(34).

10 12. Plan participants pay for the Plan's administrative expenses
11 through a direct charge to their accounts.

12 13. The deduction of these administrative expenses from
13 participant accounts reduces the funds available to participants for
14 distribution and/or investing.

15 14. Participants in the Honeywell Plan are immediately vested in
16 their own contributions and earnings thereon. Participants become 100%
17 vested in the Company's contributions and earnings thereon upon the
18 completion of three years of service.

19 15. When a participant has a break in service prior to full vesting
20 of the Company's contributions, the unvested contributions are forfeited
21 and Defendants exercise discretionary authority and control over how
22 these Plan assets are thereafter reallocated.

23 16. Although ERISA requires Defendants to defray the Plan's
24 expenses, *see* 29 U.S.C. § 1104(a)(1)(A)(ii), throughout the class period
25 Defendants have consistently failed to use the forfeited funds to pay Plan
26 administrative expenses, and thereby reduce or eliminate the amounts
27 charged to the participants' individual accounts to cover such expenses.

1 17. Instead, Defendants have consistently utilized the forfeited
2 funds in the Plan exclusively for the Company's own benefit, to the
3 detriment of the Plan and its participants, by using these Plan assets
4 solely to reduce Company contributions to the Plan.

5 18. In 2018, Company contributions to the Plan were reduced by
6 approximately \$2.4 million as a result of Defendants' reallocation of
7 forfeited funds for the Company's own benefit, and no forfeited funds
8 were used to pay any part of the approximately \$5 million in Plan
9 expenses charged to participants.

10 19. In 2019, Company contributions to the Plan were reduced by
11 approximately \$3.1 million as a result of Defendants' reallocation of
12 forfeited funds for the Company's own benefit, and no forfeited funds
13 were used to pay any part of the approximately \$6 million in Plan
14 expenses charged to participants.

15 20. In 2020, Company contributions to the Plan were reduced by
16 approximately \$4 million as a result of Defendants' reallocation of
17 forfeited funds for the Company's own benefit, and no forfeited funds
18 were used to pay any part of the approximately \$2 million in Plan
19 expenses charged to participants.

20 21. In 2021, Company contributions to the Plan were reduced by
21 approximately \$7 million as a result of Defendants' reallocation of
22 forfeited funds for the Company's own benefit, and no forfeited funds
23 were used to pay any part of the approximately \$9 million in Plan
24 expenses charged to participants.

25 22. In 2022, Company contributions to the Plan were reduced by
26 approximately \$7 million as a result of Defendants' reallocation of
27 forfeited funds for the Company's own benefit, and no forfeited funds
28

1 were used to pay any part of the approximately \$4 million in Plan
2 expenses charged to participants.

3 23. While Defendants' reallocation of the forfeitures in the Plan's
4 trust fund to reduce its contributions benefitted the Company by
5 reducing its own contribution expenses, it harmed the Plan, along with
6 its participants and beneficiaries, by reducing Company contributions
7 that would otherwise have increased Plan assets and by causing
8 participants to incur deductions from their individual accounts to cover
9 administrative expenses that would otherwise have been covered in
10 whole or in part by utilizing forfeited funds.

11 **CLASS ACTION ALLEGATIONS**

12 24. 29 U.S.C. § 1132(a)(2) authorizes any participant or
13 beneficiary of the Plan to bring an action individually on behalf of the
14 Plan to enforce a breaching fiduciary's liability to the Plan under 29
15 U.S.C. § 1109(a).

16 25. In acting in this representative capacity and to enhance the
17 due process protections of unnamed participants and beneficiaries of the
18 Plan, as an alternative to direct individual actions on behalf of the Plan
19 under 29 U.S.C. § 1132(a)(2), Plaintiff seeks to certify this action as a
20 class action on behalf of all Honeywell Plan participants and
21 beneficiaries. Plaintiff seeks to certify the following class:

22 All participants and beneficiaries of the Honeywell Plan
23 from February 13, 2018 through the date of judgment,
24 excluding Defendants.

25 26. This action meets the requirements of Rule 23 and is
26 certifiable as a class action for the following reasons:

27 a. The class includes over 60,000 members and is so large
28

1 that joinder of all its members is impracticable.

2 b. There are questions of law and fact common to the class
3 because Defendants owed fiduciary duties to the Plan and to all
4 participants and beneficiaries and took the actions alleged herein as to
5 the Plan and not as to any individual participant. Thus, common
6 questions of law and fact include the following, without limitation: Who
7 are the fiduciaries liable for the remedies provided by 29 U.S.C. §
8 1109(a)? Did the fiduciaries of the Plan breach their fiduciary duties to
9 the Plan with respect to their management and allocation of Plan assets?
10 Did fiduciaries of the Plan engage in prohibited transactions with Plan
11 assets? Did fiduciaries of the Plan violate the anti-inurement provision
12 of ERISA by using Plan assets for their own benefit? What are the losses
13 to the Plan resulting from each alleged breach of ERISA? What Plan-
14 wide equitable and other relief should the Court impose to remedy
15 Defendants' alleged breaches?

16 c. Plaintiff's claims are typical of the claims of the class
17 because Plaintiff was a participant of the Plan during the class period
18 and all participants in the Plan were harmed by the same alleged
19 misconduct by Defendants.

20 d. Plaintiff is an adequate representative of the class
21 because he was a participant of the plan during the class period, has no
22 interests that conflict with any other members of the class, is committed
23 to the vigorous representation of the class, and has engaged experienced
24 and competent attorneys to represent the class.

25 e. Prosecution of separate actions for these breaches of
26 fiduciary duties and prohibited transactions by individual participants
27 and beneficiaries would create the risk of (A) inconsistent or varying
28

1 adjudications that would establish incompatible standards of conduct for
2 Defendants with respect to their discharge of their fiduciary duties to the
3 Plan and personal liability to the Plan under 29 U.S.C. § 1109(a), and (B)
4 adjudications by individual participants and beneficiaries regarding
5 these breaches of fiduciary duties, prohibited transactions, and remedies
6 for the Plan would, as a practical matter, be dispositive of the interests
7 of the participants and beneficiaries not parties to the adjudication or
8 would substantially impair or impede those participants' and
9 beneficiaries' ability to protect their interests. Therefore, this action
10 should be certified as a class action under Rule 23(b)(1)(A) or (B).

11 27. A class action is the superior method for the fair and efficient
12 adjudication of this controversy because joinder of all participants and
13 beneficiaries is impracticable, the losses suffered by individual
14 participants and beneficiaries may be small and impracticable for
15 individual members to enforce their rights through individual actions,
16 and the common questions of law and fact predominate over individual
17 questions. Given the nature of the allegations, no class member has an
18 interest in individually controlling the prosecution of this matter, and
19 Plaintiff is aware of no difficulties likely to be encountered in the
20 management of this matter as a class action. Alternatively, then, this
21 action may be certified as a class under Rule 23(b)(3) if it is not certified
22 under Rule 23(b)(1)(A) or (B).

23 28. Plaintiff's counsel, Hayes Pawlenko LLP, will fairly and
24 adequately represent the interests of the Class and is best able to
25 represent the interests of the class under Rule 23(g).

26 ///

27 ///

FIRST CLAIM
BREACH OF FIDUCIARY DUTY OF LOYALTY
(29 U.S.C. 1104(a)(1)(A))

29. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

30. Pursuant to 29 U.S.C. § 1104(a)(1)(A), Defendants were required to discharge their duties to the Honeywell Plan “solely in the interest of the participants and beneficiaries” and “for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan.”

31. Defendants have continually breached this duty of loyalty with respect to their control and management of the Plan’s assets throughout the class period by utilizing forfeited funds in the Plan for the benefit of the Company rather than solely in the interest of the participants and beneficiaries.

32. Instead of acting solely in the interest of Plan participants by utilizing forfeited funds in the Plan to reduce or eliminate the administrative expenses charged to their individual accounts, Defendants used these Plan assets for the purpose of reducing its own contributions to the Plan, thereby saving the Company millions of dollars each year at the expense of the Plan which received decreased Company contributions and its participants and beneficiaries who were forced to incur avoidable expense deductions to their individual accounts.

33. As a direct and proximate result of Defendants’ fiduciary breaches described herein, the Plan suffered injury and loss for which they are personally liable and are subject to appropriate equitable relief,

1 pursuant to 29 U.S.C. § 1109, including, without limitation, the
2 disgorgement of all ill-gotten profits to Defendants resulting from the
3 breach of their duty of loyalty.

4 34. Each Defendant knowingly participated in the breach of the
5 other Defendants, knowing that such acts were a breach, enabled other
6 Defendants to commit a breach by failing to lawfully discharge its own
7 fiduciary duties, knew of the breach by the other Defendants and failed
8 to make any reasonable effort under the circumstances to remedy the
9 breach. Thus, each Defendant is liable for the losses caused by the breach
10 of its co-fiduciary under 29 U.S.C. § 1105(a).

11 **SECOND CLAIM**

12 **BREACH OF FIDUCIARY DUTY OF PRUDENCE**

13 **(29 U.S.C. 1104(a)(1)(B))**

14 35. Plaintiff realleges and incorporates herein by reference each
15 and every allegation contained in the preceding paragraphs of this
16 Complaint as though fully set forth herein.

17 36. Pursuant to 29 U.S.C. § 1104(a)(1)(B), Defendants were
18 required to discharge their duties with respect to the Honeywell Plan
19 “with the care, skill, prudence, and diligence under the circumstances
20 then prevailing that a prudent man acting in a like capacity and familiar
21 with such matters would use in the conduct of an enterprise of a like
22 character and with like aims.”

23 37. Defendants have continuously breached their duty of
24 prudence under 29 U.S.C. § 1104(a)(1)(B) throughout the class period by
25 failing to use the forfeited funds in the plan to eliminate or reduce the
26 administrative expenses charged to participant accounts and instead
27 using such Plan assets to reduce the Company’s own contributions to the
28

1 Plan.

2 38. Defendants failed to engage in a reasoned and impartial
3 decision-making process to determine that using the forfeited funds in
4 the Plan to reduce the Company's own contribution expenses, as opposed
5 to the administrative expenses charged to participant accounts, was in
6 the best interest of the Plan's participants or was prudent, and failed to
7 consider whether participants would be better served by another use of
8 these Plan assets after considering all relevant factors.

9 39. By failing to use forfeited funds in the Plan to eliminate or
10 reduce the administrative expenses charged to participant accounts, and
11 instead using such Plan assets to reduce the Company's own contribution
12 expenses, Defendants caused the Plan to receive fewer contributions that
13 would otherwise have increased Plan assets and caused participants to
14 incur expense deductions from their individual accounts that would
15 otherwise have been covered in whole or in part by utilizing the forfeited
16 funds to pay Plan expenses.

17 40. As a direct and proximate result of Defendants' fiduciary
18 breaches, the Plan suffered injury and loss for which Defendants are
19 personally liable and are subject to appropriate equitable relief, pursuant
20 to 29 U.S.C. § 1109, including, without limitation, the disgorgement of all
21 ill-gotten profits to Defendants resulting from the breach of their duties.

22 41. Each Defendant knowingly participated in the breach of the
23 other Defendants, knowing that such acts were a breach, enabled other
24 Defendants to commit a breach by failing to lawfully discharge its own
25 fiduciary duties, knew of the breach by the other Defendants and failed
26 to make any reasonable effort under the circumstances to remedy the
27 breach. Thus, each Defendant is liable for the losses caused by the breach
28

of its co-fiduciary under 29 U.S.C. § 1105(a).

THIRD CLAIM

BREACH OF ERISA’S ANTI-INUREMENT PROVISION

(29 U.S.C. 1103(c)(1))

42. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

43. Pursuant to 29 U.S.C. § 1103(c)(1), “the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.”

44. The balance in a participant’s accounts that a participant forfeits when incurring a break in service prior to full vesting of the Company’s contributions to the participant’s account is an asset of the Honeywell Plan.

45. By utilizing these Plan assets as a substitute for the Company’s own contributions to the Plan, thereby saving the Company millions of dollars in contribution expenses, Defendants caused the assets of the Plan to inure to the benefit of Honeywell, an employer, in violation of 29 U.S.C. § 1103(c)(1).

46. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make good to the Plan any losses to the Plan resulting from violation of ERISA’s anti-inurement provision as alleged in this claim and to restore to the Plan all profits secured through their use of Plan assets, and is subject to other equitable or remedial relief as appropriate.

///

FOURTH CLAIM
PROHIBITED TRANSACTIONS
(29 U.S.C. 1106(a)(1))

47. Plaintiff realleges and incorporates herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

48. 29 U.S.C. § 1106(a)(1) provides that “[a] fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect . . . exchange . . . of any property between the plan and a party in interest . . . or use by or for the benefit of a party in interest, of any assets of the plan.”

49. Honeywell and the Vice President are parties in interest, as that term is defined under 29 U.S.C. §1002 (14), because they are Plan fiduciaries and because Honeywell is the employer of Plan participants.

50. By using forfeited funds in the Plan as a substitute for employer contributions to the Plan, and thereby saving the Company millions of dollars in contribution expenses, Defendants caused the Plan to engage in transactions that constituted a direct or indirect exchange of existing Plan assets for future employer contributions and/or a use of Plan assets by or for the benefit of a party in interest.

51. As a result of these prohibited transactions, Defendants caused the Plan to suffer losses in the amount of the Plan assets that were substituted for future employer contributions and the lost investment returns on those assets.

52. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make good to the Plan any losses to the Plan resulting from the

1 prohibited transactions alleged in this claim, to reverse and/or correct the
2 prohibited transactions, to restore to the Plan all assets and profits
3 obtained through the use of Plan assets and is subject to other equitable
4 or remedial relief as appropriate.

5 **FIFTH CLAIM**
6 **PROHIBITED TRANSACTIONS**
7 **(29 U.S.C. 1106(b)(1))**

8 53. Plaintiff realleges and incorporates herein by reference each
9 and every allegation contained in the preceding paragraphs of this
10 Complaint as though fully set forth herein.

11 54. 29 U.S.C. § 1106(b) provides that “[a] fiduciary with respect
12 to a plan shall not,” among other things, “deal with the assets of the plan
13 in his own interest or for his own account.”

14 55. Defendants violated this prohibition in their management
15 and control of forfeiture funds in the Plan. By utilizing these Plan assets
16 as a substitute for employer contributions to the Plan, thereby saving the
17 Company millions of dollars in contribution expenses, Defendants dealt
18 with the assets of the Plan in their own interest and for their own
19 account.

20 56. As a result of this prohibited conduct, Defendants caused the
21 Plan to suffer losses in the amount of the Plan assets that were
22 substituted for future employer contributions and the lost investment
23 returns on those assets.

24 57. Each Defendant is personally liable under 29 U.S.C. § 1109(a)
25 to make good to the Plan any losses to the Plan resulting from the
26 prohibited conduct alleged in this claim, to restore to the Plan all assets
27 and profits obtained through the use of Plan assets and is subject to other
28

equitable or remedial relief as appropriate.

PRAYER FOR RELIEF

For these reasons, Plaintiff, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully requests that the Court:

- find and declare that Defendants have breached their fiduciary duties and engaged in prohibited conduct and transactions as described above;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each violation of ERISA described above, and to otherwise restore the Plan to the position it would have occupied but for these violations;
- order the disgorgement of all assets and profits secured by Defendants as a result of each violation of ERISA described above;
- determine the method by which Plan losses under 29 U.S.C. § 1109 should be calculated;
- order Defendants to provide all accounting necessary to determine the amounts Defendants must make good to the Plan under 29 U.S.C. § 1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;

- certify the class, appoint Plaintiff as a class representative, and appoint Hayes Pawlenko LLP as class counsel;
- award to Plaintiff and the class their attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and
- grant other equitable or remedial relief as the Court deems appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of these claims by jury to the extent authorized by law.

DATED: February 13, 2024

HAYES PAWLENKO LLP

By: /s/Kye D. Pawlenko
Matthew B. Hayes
Kye D. Pawlenko
Attorneys for Plaintiff